

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TIMOTHY DURLEY,

Plaintiff,

v.

Case No. 21-cv-1263-pp

CHERYL JEANPIERRE, *et al.*,

Defendant.

**ORDER GRANTING MOTION TO PAY INITIAL PARTIAL FILING FEE FROM
RELEASE ACCOUNT (DKT. NO. 17)**

On November 9, 2021, the court ordered plaintiff Timothy Durley to pay an initial filing fee of \$2.33 by November 30, 2021. Dkt. No. 14. On November 16, 2021, the plaintiff filed a motion asking the court to order Waupun Correctional Institution, where he is incarcerated, to pay the \$2.33 initial partial filing fee from his release account. Dkt. No. 16. The plaintiff says he tried to pay the initial partial filing fee but was told he has to get a court order to pay it with funds from his release account. Id. He also filed a declaration attesting to the same facts, to which he attached a disbursement request from November 14, 2021. Dkt. No. 18 at 3. The Disbursement Request asks the prison to send a \$2.33 check from the plaintiff's regular account and release account to the court to pay the initial partial filing fee. Id. The prison denied the request the next day, giving the reason "Need Court order." Id.

The order requiring the plaintiff to pay the initial partial filing fee provided that the plaintiff could use funds from his release account to pay the

initial partial filing fee “only if the prisoner does not have enough money in his regular trust account.” Dkt. No. 14 at 3 (citing Carter v. Bennett, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005)). The court instructed that “if the plaintiff does not have enough money in his regular trust account to pay the initial partial filing fee but does have enough money in his release account, the *plaintiff* is responsible for making arrangements with the authorities at the jail or prison to pay the balance of the initial partial filing fee from the release account.” Id.

With that reminder, the court will grant the plaintiff's request as follows: The plaintiff may use the funds in his release account to pay the initial partial filing fee *only* if he does not have sufficient funds in his regular account to pay all of the initial partial filing fee. If the plaintiff has money in his regular account, he must first use that money to pay the initial partial filing fee. As noted, the court has ordered the plaintiff to pay an initial partial filing fee of \$2.33. The plaintiff's prison trust account statement shows that as of October 31, 2021, he had \$0.24 in his regular account but had \$11.92 in his release account. Dkt. No. 13. That means the plaintiff must ask his institution to withdraw the *full amount* from his regular account and then may withdraw the remainder of the balance from his release account *only if it is necessary* to cover any remaining cost. In other words, he must deplete *all* the funds in his regular account before he can access the money in his release account. For example, if \$0.24 remains in the plaintiff's regular account, he must ask the prison to withdraw that amount and then must ask the prison to withdraw the

remaining \$2.09 balance from his release account. The plaintiff should take care to precisely word his disbursement request so that the request complies with the court's order. The court will extend the plaintiff's deadline to pay the initial partial filing fee to allow enough time for him to request the payment from his release account.

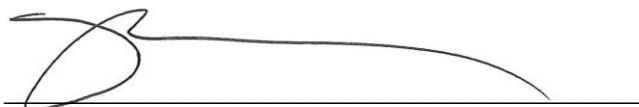
The court conditionally **GRANTS** the plaintiff's motion to use his release account to pay the initial partial filing fee, as described above. Dkt. No. 16.

The court **ORDERS** that the plaintiff's deadline to pay the \$2.33 initial partial filing fee is extended to **December 10, 2021. By the end of the day on December 10, 2021**, the plaintiff must submit a check or money order made payable to the Clerk of Court in the amount of \$2.33 or advise the court in writing why he is not able to submit the assessed amount. To the extent the plaintiff does not have enough money in his regular account to make the initial partial payment, he is responsible for making arrangements with authorities to pay the remainder of the initial partial filing fee from his release account, as explained above.

The court **ORDERS** that a copy of this order be sent to the Warden at Waupun Correctional Institution.

Dated at Milwaukee, Wisconsin this 19th day of November, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge